



**DEPARTMENT OF HOMELAND SECURITY**

**[Docket No. DHS-2021-0051]**

**Identifying Recommendations to Support the Work of the Interagency Task Force on the Reunification of Families**

**AGENCY:** Department of Homeland Security.

**ACTION:** Request for public input.

**SUMMARY:** The Department of Homeland Security (DHS), on behalf of the Interagency Task Force on the Reunification of Families (Task Force), is seeking comments from the public on recommendations for ways to minimize the separation of migrant parents and legal guardians and children entering the United States, consistent with the law. This input will help in the drafting of a report required by the Executive order titled “Establishment of Interagency Task Force on the Reunification of Families.”

**DATES:** Comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments, identified by docket number DHS-2021-0051, through the Federal eRulemaking Portal: <https://www.regulations.gov>. Comments submitted in any other manner, including emails or letters sent to Task Force officials, may not be reviewed by the Task Force. The Task Force cannot accept any comments that are hand delivered or couriered. In addition, the Task Force cannot accept comments contained on any form of digital media storage devices, such as CDs/DVDs and USB drives. Due to COVID-19, the Task Force is also not accepting mailed comments at this time. If you cannot submit your comment by using <https://www.regulations.gov>, please contact Samantha Deshommes, Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, by telephone at (240) 721-3000 for alternate instructions.

**FOR FURTHER INFORMATION CONTACT:** Carrie Anderson, Director of Policy for the Family Reunification Task Force, U.S. Department of Homeland Security, (240) 721-3000 (this is not a toll-free number).

Individuals with hearing or speech impairments may access the telephone numbers above via TTY by calling the toll-free Federal Information Relay Service at 1-877-889-5627.

## **SUPPLEMENTARY INFORMATION:**

### **I. Public Participation**

Interested persons are invited to comment on this notice by submitting input using the method identified in the ADDRESSES section above.

*Instructions:* All comments received may be posted without change to <https://www.regulations.gov> including any personal information provided.

*Docket:* For access to the docket to view comments, go to <https://www.regulations.gov/>.

### **II. Background**

#### **A. Executive Order 14011**

On February 2, 2021, President Biden signed Executive Order 14011 (E.O. 14011), Establishment of Interagency Task Force on the Reunification of Families, condemning the human tragedy that occurred when application of our immigration laws resulted in the separation of children from their parents or legal guardians (families), including through the use of the Zero-Tolerance Policy, and committing to protect family unity so that children entering the United States are not separated from their families, except in the most extreme circumstances when necessary for the safety and well-being of the child or when required by law.<sup>1</sup>

As early as February 2017, some Trump administration officials began discussing the separation of parents from their children at the U.S.-Mexico border. In the summer of 2017, in the El Paso, Texas Border Patrol Sector, there was an increase in the number of prosecutions for illegal entry which resulted in an increase in the number of family separations within that sector. On April 6, 2018, the Department of Justice (DOJ) formally announced the Zero-Tolerance Policy, which was implemented through a memorandum issued by then-Attorney General Jeff Sessions to all U.S. Attorney's Offices along the Southwest border. Under this policy, DOJ would prosecute all referrals of individuals for 8

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<sup>1</sup> 86 FR 8273 (published Feb. 5, 2021).

U.S.C. 1325 (unauthorized entry), to the extent practicable, even though it meant the separation of parents and children.

On May 5, 2018, based on guidance from DHS, U.S. Customs and Border Protection (CBP) began to refer an increased number of individuals to DOJ for criminal prosecution for entering the United States without authorization, including parents who entered with their minor children. When parents were referred for criminal prosecution under 8 U.S.C. 1325, they were remanded to the custody of the U.S. Marshals Service for the duration of their criminal proceedings. Their accompanying children were then classified as unaccompanied children (UC) and therefore transferred to the care and custody of the U.S. Department of Health and Human Services, Office of Refugee Resettlement (HHS-ORR).

On June 20, 2018, President Trump signed Executive Order 13841, Affording Congress an Opportunity to Address Family Separation, to maintain family unity during the pendency of immigration and criminal proceedings relating to 8 U.S.C. 1325 prosecutions for unauthorized entry, where appropriate and consistent with the law.<sup>2</sup>

The separations of parents and children were challenged in federal court, and on June 26, 2018, a federal district court ordered the reunification of a certified class of parents with their children. The court later expanded the class to include parents who entered the United States with their child(ren) on or after July 1, 2017, were separated from their children, and whose children were not in HHS-ORR custody on June 26, 2018.

The Department, including Task Force agency members, is involved in multiple active litigation cases involving separated families, but that litigation is ongoing and outside the scope of this request for public information.

## **B. Scope and Functions of the Task Force**

E.O. 14011 established the Task Force, which focuses on family separations that occurred at the U.S.-Mexico border between January 20, 2017, and January 20, 2021, in connection with the operation of the Zero-Tolerance Policy. E.O. 14011 defines “Zero-Tolerance Policy” as the policy discussed in the

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<sup>2</sup> 83 FR 29435 (published Jun. 25, 2018).

Attorney General's memorandum of April 6, 2018, entitled, "Zero-Tolerance for Offenses Under 8 U.S.C. 1325(a)," and any other related policy, program, practice, or initiative resulting in the separation of children from their families at the United States-Mexico border. E.O. 14011 identifies the Task Force's key functions as the following:

- Identify all children who were separated by DHS from their families at the United States-Mexico border between January 20, 2017 and January 20, 2021 as a result of the Zero-Tolerance Policy;
- Facilitate and enable the reunification of those children with their families;
- Provide recommendations regarding the provision of additional services and support for the children and their families, including behavioral health services with a focus on trauma-informed care; and
- Provide regular reports to the President, including: an initial progress report no later than 120 days after the date of E.O. 14011; interim progress reports every 60 days thereafter; a report containing recommendations to ensure that the Federal Government will not repeat the policies and practices leading to the separation of families at the border no later than 1 year after the date of E.O. 14011; and a final report when the Task Force has completed its mission.

The Task Force leverages the authorities and functions of the Secretaries of Homeland Security, State, and Health and Human Services, the Attorney General, and other key government officials to complete the functions ordered in E.O. 14011.

### **C. Recommendations Report**

Section 4(c)(iii) of E.O. 14011 requires the Task Force to provide the President "a report containing recommendations to ensure that the Federal Government will not repeat the policies and practices leading to the separation of families at the border, no later than 1 year after the date of this order."

### **III. Request for Input**

E.O. 14011 directs the Task Force to coordinate its work, as appropriate and consistent with applicable law, with relevant stakeholders, including domestic and international non-governmental organizations, and representatives of the children and their families. Based on this directive, the Task

Force is soliciting input and recommendations to minimize the separation of migrant parents and legal guardians and children entering the United States, consistent with law. The Task Force welcomes thoughts on the causes of family separations that occurred incident to the Zero-Tolerance policy as well as policies, procedures, or regulations that may minimize the separation of migrant parents and legal guardians and children entering the United States, consistent with law. This is not an exhaustive list of the types of comments the Task Force is interested in receiving on this important topic and the public may provide additional thoughts and concerns.

#### **IV. Review of Public Feedback**

The Task Force will use the public's feedback to help draft recommendations to the President on how to prevent the Federal Government in the future from separating children from their parents except in the most extreme circumstances where a separation is clearly necessary for the safety and well-being of the child or is required by law, as directed in E.O. 14011. Public input provided in response to this notice does not bind the Task Force to any further actions, to include publishing a formal response or agreement to initiate a recommended change. The Task Force will consider the feedback and include the feedback in its report at its sole discretion.

#### *Disclaimer*

This notice is for information and planning purposes only and should not be construed as a solicitation or as creating or resulting in any obligation on the part of DHS.

**Dated:** December 6, 2021.

Michelle Brané,  
Executive Director, Interagency Task Force on the Reunification of Families,  
U.S. Department of Homeland Security.  
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